THE ENGLISH JUDICATURE ACT OF 1873.

IT seems to be the general impression that reform in judicial procedure is a new and radical thing in the history of jurisprudence. This is far from the fact. It is as old as jurisprudence itself. From Solon to Justinian, from Justinian to the Magna Charta, from the Magna Charta to Bentham, from Bentham to Field, and in every civilized country, radical changes have taken place from time to time, touching both procedure and substantive law. Court systems have been codified, systematized and rearranged to meet advancing and changing social and industrial conditions. From the religious ceremonies, constituting the methods of legal procedure of the early Romans, to the wager of battle and of law in early English times; from these and other primitive methods to the intricate formalism of the thirteenth to the early part of the nineteenth centuries, and from that period until the present, constant changes have taken place.

As we look back through the centuries and follow the struggles of men for liberty according to law, we can see clearly that these changes have had, in the main, a strong, if not a controlling, influence toward the fulfillment of that desire. The trouble with most of us, when we consider this subject of reform, is that we do not look at it from the proper historical perspective.

When the perfect system of procedure is found and the book of Experience closed, I apprehend that the period of social decadence will be entered upon. It was so in Rome and other once-great nations, and may be so with us.

It is to be noted that in the great crises of the past and whenever any considerable change has been accomplished in the law, such reforms have been brought about by a minority of the lawyers supported by laymen. It is but natural that this should be so. In early manhood lawyers are taught the fundamental principles of both substantive law and of procedure in the necessary preparation for the work of their profession. To them these principles have a significance that has no parallel in any other study they may undertake. They become wedded to them, and they become a part of their habitual thought and conduct. As they engage in their work from day to day, they are concerned only in what is, and not in what might be. Their plans are formed upon conditions that exist; upon principles that have long been established; upon precedents on which they can safely rely and without speculation follow. These conditions, these considerations, make the lawyer the most conservative of men. It

is well that this conservatism exists; for it is one of the strong counter-acting forces of civilization, holding in check those extreme proposals for reform advanced from time to time, which, if given full effect, might lead to disaster.

During the early formative period of English jurisprudence, constituting the beginning of our common law, repeated, but unsuccessful efforts were made to incorporate the methods of the civil, or Roman, law into our procedure. Bracton, who wrote in the thirteenth century, was one of the later writers who made this attempt. But the judges of that early period sought to establish a distinct system of laws which should be especially adapted to the English people, and resisted strenuously all efforts at interference with that purpose.

It was this resistance that developed our jury system, and, through the jury system, our rules of evidence and methods of trial, wherein we differ materially from the methods of Roman procedure even to this day. Any one who will take the trouble to enquire into the methods of procedure as now applied by the continental countries of Europe, will note the wide divergence between that system and our own. Such investigation will also be illuminating in this: it will indicate the origin of many of our modern day reforms which have, either wholly or partially, failed because of the utter incongruity of the two systems.

Our early system of equity courts and jurisdiction, and particularly the practice in those courts, was, in large measure, an early adaptation of Roman or civil remedies and procedure by a common law country. The conflict of jurisdiction between courts of law and of equity, and the different methods of taking proof and of hearing, have continued through the centuries, and not until quite recently, in many common law jurisdictions, have these distinctions been either modified or entirely abated. Where equity courts are still maintained, as has been the practice through the years, the chancellor or judge takes all the evidence offered, as would be done under the Roman procedure, but, contrary to that practice, applies the common law rules of evidence and eliminates all incompetent, irrelevant, and immaterial matters from consideration in reaching his conclusion.

These matters have all been worked out and thoroughly discussed in the master-works of Sir Matthew Hale, Pollock & Maitland, Sir Henry Maine, and others, who devoted, in large part, the energies of their lives to the study of the history and philosophical development of our common law.

But it was not until Bentham's time, the latter part of the eighteenth and the fore part of the nineteenth centuries, that the real significance of the distinction between substantive law and procedure, or adjective law, was brought out with clear and proper emphasis. Blackstone, and all the writers before him, did not make the distinction as it has been understood since Bentham's day. These early writers and judges treated the form and ceremony by which substantive rights were established as of equal importance to the right itself. The form, the kind of writ, the rule, the absolute letter, it was contended, must be complied with. The one was as much law as the other.

I apprehend, however, that at this day we can all agree with Professor Holland when he says: "We have a law of persons; a substantive law, which explains the rights of those persons; and an adjective law, which describes the procedure by which redress is to be obtained when those rights are violated." And again: "So far as it defines, thereby creating, it is substantive law. So far as it provides a method of aiding and protecting, it is adjective law, or procedure."[1]

This distinction, first clearly voiced by Bentham, was undoubtedly one of his chief contributions to the cause of later procedural reforms in this country and in England, for it forms the underlying basis of all subsequent efforts in that direction and is the principle upon which all accomplished reforms are established.

But Bentham did not live to see his ideals, or any of them, either accepted or accomplished. His life's work seemed to be fruitless of any results, except the fugitive effort of Edward Livingston of Louisiana, one of his disciples, who framed a new code of procedure for that State in 1805. Livingston later, in 1820, at the request of the Louisiana legislature, accomplished a complete codification of the law, both civil and criminal, on lines mapped out by Bentham, but it failed of adoption. It became, however, the groundwork for much of the codification of many of our States, forty to fifty years later, and even influenced the work of the various commissions of England appointed from time to time between 1832 and 1869, whose united work culminated in the Judicature Act of 1873. But the conservatism of the bench and bar of England denied recognition to Bentham's genius during his life time and his chief work was brought out in France through the efforts of friends there.

It will not be necessary, nor will space permit me, to go into much, if any, detail concerning the various matters relating to com-

[1] Holland, Elements of Jurisprudence, 78, 348.

mon law pleading and practice. It will be presumed that my readers are all more or less familiar with this subject.

Michigan is still a common law State, so-called, and although many of the niceties, technicalities, and formalities of the early common law procedure have been either modified or entirely done away with by statute and otherwise, we still adhere in the main to that practice. A glance over the tables of contents of our practice books, both law and chancery, will show that in the former we still adhere to many of the forms of action and writs of an earlier period; and in the latter, that the methods of a century or more ago, in large measure, still obtain. The distinction between law and equity is still upheld. The fictions that had their origin in the early stages of common law development are, many of them, still retained, although they have long since lost their meaning and purpose. Until changed by recent rule we adhered to the "lost and finding" idea in trover and conversion, and still adhere to "implied promise" in assumpsit, and to certain feigned situations in ejectment; all of which arose out of a desire on the part of the early judges to establish certain substantive rights for which there was no convenient formula within the scope of some existing formula. Who of us realize when we write at the close of our declarations, "And, therefore, he brings suit," that originally, six or seven hundred years ago, the "suit" referred to was not the action about to be commenced, but the "suite," or train of suitors, a plaintiff was required to bring personally into court to vouch for the good faith of his cause, and, in a measure, to awe the defendant into submission. The larger the train and the more influential the suite, the more likely was the plaintiff to win his case. Such a meaning has become entirely lost to us, but we still use the form with a different meaning.

The distinction between personal and real actions is still maintained. Under the head of "personal actions" we still find assumpsit, trover, case, trespass, and replevin. Under "case" there are the various actions for damages, covering negligence, fraud, malicious prosecution, false imprisonment, and the like. The "real" actions are ejectment, summary proceedings to recover possession of lands, trespass on lands, nuisance, waste, and foreclosure of mortgage by advertisement. Special statutory legal remedies are provided for, which are contempt, mandamus, procedendo, quo warranto, habeas corpus, scire facias, proceedings against fraudulent debtors, proving execution of deed, discharge of mortgage of record, and vacating village plats. There are also special statutory proceedings against infants, corporations, certain municipal bodies, executors and admin-

istrators, and sheriffs, as well as proceedings to enforce liens and to recover penalties and forfeitures.

On the equity side of the court the various grounds for relief and subjects of jurisdiction are almost illimitable, and I will not attempt to mention them, simply saying in passing that relief in such courts is granted outside and beyond the jurisdiction of a court of law; for no court of equity is permitted to grant relief when there is an adequate remedy at law.

The volumes of our reports are full of cases where the suitor has mistaken his remedy, and has, in consequence, been denied relief. The misjoinder of causes of action and the hard-and-fast rules in relation thereto, find exemplification in many of our adjudicated cases. The rules as to both parties plaintiff and defendant in actions at law and complainants and defendants in suits in chancery, show that we still adhere, in the main, to the rules of several centuries ago. One has only to look through the work of Dicey on "Parties to Actions," or any similar work on procedure and practice, to find verification of this statement.

An examination of the prevailing forms, either at law or in equity, will show in many instances the needless prolixity of the pleadings still required.

Yet we are prone to believe, and we hear the sentiment generally expressed, that Michigan differs from the other States; that she needs no reform in her legal procedure; that her procedure already has been so simplified by statute that further simplification would be not only unnecessary but useless. This, again, is the natural expression of conservatism. We have become accustomed to our own procedure and are inclined to believe that, while other States may need reform in this regard, we do not.

The assumption still obtains, it is true, that we all understand these rules of pleading and, as lawyers, can apply them with accuracy and precision in establishing the substantive rights of our clients. But, is this assumption well founded? We have only to look through our digests on any subject relating to pleading and practice to find that it is not; that innumerable cases are reversed on account of defects in these particulars. Litigants are often carried from one court to the other on the wings of procedure to find at last that, instead of "kicking the goal," they have lost out completely because of some defective practice early in the game, and are thereupon "set back" or "penalized" to the point of beginning.

I recall with what interest and avidity I pored over Stephen on Pleading some thirty years ago. It seemed to me then—and I still

cherish the same feeling—that nowhere had I encountered so profound, so logical, and so clear an exposition of a single branch of the law as contained in that volume. Personally, therefore, I do not object to the system, and with Judge EVANS of the Supreme Court of Alabama, can say: "While as a citizen and a judge I deplore it, yet as a lawyer and dialectician I rejoice in it. As a means for the administration of justice its efficacy is to be doubted; while as an intellectual gymnasium its appointments could scarcely be improved upon."[2]

The first edition of Stephen on Pleading was published in 1824. Its close technical rules and formalisms constituted the practice of all English-speaking peoples at that time, except in the State of Louisiana where the first Livingston Code had been adopted in 1805, as already stated.

Bentham had radically attacked the conservative, though consummate and profound, exposition of the law by Blackstone, whose pupil he had been, from at least three standpoints. (1) As to the distinction which should be drawn between adjective and substantive law; (2) the futility and waste of having two separate and distinct systems of jurisprudence (law and equity) to administer substantive rights to a single people; and (3) the needless prolixity of all existing pleadings in proceedings at both law and in equity.

For many years Bentham was practically alone. But his vigorous attacks finally set men to thinking. Sir Henry MAINE, who wrote in 1874, said: "I do not know of a single law reform effected since Bentham's day which cannot be traced to his influence." Beginning with 1828 the English Parliament appointed a series of commissions to enquire into law procedure and other subjects and report such changes as should be enacted. Bentham died in 1831. It was in that year that the first commission so appointed made its report. The opinion was expressed by this commission that the existing rules of common law pleading were founded "in strong sense and closest logic, and so appear when well understood and explained."

It was believed by this commission that these rules could be adapted to the demands of modern times without impairing their integrity, and that any attempts to establish a new system would cause greater mischief than the retention of the old. The possible "fusion" of the administration of courts of law and equity was scarcely deemed a practical question at this time. It was still believed that the idea of the administration of legal and equitable

[2] 71 Cent. L. Jour. 327-9.

rights by distinct tribunals was founded upon the principles of eternal justice.

It was not until thirty years later that this question became a real live issue. The conservatism of the report of this first commission led, of course, to a no less conservative result. The so-called "Hilary" rules of court and some partial changes in chancery practice followed.

These rules, framed by the judges under authority granted by Parliament, but hardly touched the vital questions of reform then being agitated. Their chief aim was to remedy what were essential, but incidental, defects and faults of the existing system: the vagueness of general pleading; the prolixity of special pleading, and the necessity of certain formal allegations. They were an effort, it is said, "to stave off an immediate pressing difficulty by a patchwork scheme of modification and suspension," and operated to delay procedural reform at least twenty years. But, as stated by Sir Frederick Pollock, "the flood tide of 1832 had not yet ebbed. In letters, in science, in trade and industry, there was on all hands a consciousness of fresh vigor and an expectation of great results. As it must needs fall out, men's expectation was in some things beyond the mark, in some wide of it, in many far short of it."[3]

It was not, however, until the enactment of the New York Code of 1848 that the English legislators were again aroused to action. The radical and extensive aims of this Code, going far beyond the boldest designs of the English reformers, had a profound effect. Its practical workings were carefully watched, and its comparative success stimulated them to new efforts. Their movements, however, were more cautious than ours had been. In New York the prevailing system had been annihilated by a single blow, by a single act, and an entirely new and different system established in its place, comprising, so far as possible, many of the principal measures of reform advocated by Bentham and his followers.

England felt its way slowly. The enactment of their leading reformatory statutes continued through a period of twenty years (from 1852 to 1872), and in the end went even farther than any American code has ever gone—unless it be the recent New Jersey Code, passed in July, 1912. The first distinct change was marked by a series of statutes relating to both the law courts and the court of chancery. The first series, known as the "common law procedure acts," established a reform system of pleading at law and extended

[3] 3 Law Quart. Rev. 344 (1887).

through a period of enactment of eight years.[4] The second series established a reform system of equity pleading, and covered a period of ten years.[5] The first act of the first series contained 236 sections and two schedules of forms. Two years later it was followed by an amending and enlarging statute of 100 sections, and six years later by another, known as the "Common Law Procedure Act of 1860."

These statutes were not of sudden or ephemeral growth, but were based upon reports of distinguished law commissioners, led by no less profound lawyers and scholars than Lords Denman and Brougham. They were destined, however, to be short-lived, but they marked a great advance in the direction of reform. It was provided, among other things, "that causes of action, of whatever kind, may be joined in the same suit, provided they be by and against the same party." Forms of action were simplified and many fictions formerly required to be set forth in pleadings were abolished. Special demurrers were also abolished. But, more significant than all the rest, many equitable defenses were permitted in actions at law.

This act was largely followed by many of our American States, particularly Iowa, in establishing their several codes of procedure. But it fell far short of accomplishing the ultimate aim of the reformers in at least two particulars. The principle that a pleading, whatever the nature of the relief sought, should be a plain and concise statement of the material facts, had not yet been established. It was still possible to sacrifice substance to form. Nor had the wall which separated legal from equitable procedure been shaken materially. Some inroads had been made, however, and the general drift was clearly in the direction of ultimate fusion.

The second series of acts, relating to the court of chancery, began also in 1852. In that year two acts were passed, one to amend the practice and proceeding, and the other for the relief of suitors in that court. These were followed by another act in 1858, and four years later by the "Chancery Regulation Act of 1862."

By the Chancery Act of 1852 witnesses could be orally examined before the court itself. By the act of 1858 damages might be awarded in certain instances, and a jury might be called to assess such damages or to try questions of fact. On such trials the chancellor was given the powers of a judge sitting at *nisi prius*. The Act of 1862 went still farther, and provided that the court of chancery should try out every question of law and fact incident to the

[4] 15 & 16 Vict., c. 76; 17 & 18 Vict., c. 125; 23 & 24 Vict., c. 126.
[5] 15 & 16 Vict., c. 86 and 87; 21 & 22 Vict., c. 26; 25 & 26 Vict., c. 42.

relief sought. The court was permitted also, if more convenient, to transfer to the assizes the trial of questions of fact by a jury.

It is thus seen that these statutes also bore heavily against the barriers that still separated legal and equitable procedure and relief.

For nearly twenty years both these common law and equity acts flourished; but finally, under the leadership of Lords Cairns and Selbourne and many others of the English bench and bar, the fusion between law and equity was accomplished and the entire procedure of England placed upon a uniform basis by the Judicature Act of 1873. By this act the entire system of common law pleading was swept away. It was followed in 1875 by an amendatory and supplemental act, and both went into operation November 1, 1875. For nearly forty years it has been the sole guide of the English practitioner. Various amendatory acts have been passed from time to time, but these have all been in furtherance of the purposes of the original act and not in antagonism thereto. During this period of forty years it has been adopted by all the independent colonies of Great Britain. In 1879 Connecticut adopted it so far as practicable, and it has been in satisfactory operation there ever since. As already stated, in July, 1912, the Legislature of New Jersey passed a new practice act, incorporating all the fundamental principles of the English Judicature Act.

The various codes of the several States, beginning with the New York code of 1848, (and there are now about twenty-seven so-called code States) have much in common with the English judicature act. The chief aim of this act was to create and maintain a uniform law of procedure for all of the superior courts of England. This aim involved the general and fundamental principle that the whole controversy should be settled according to the substantive rights of the parties, completely, in one proceeding, by short and direct steps. To accomplish this aim it was provided:

1. That the great historical courts of the realm that had grown up through the centuries, having different and conflicting powers and jurisdiction, should be consolidated into one "supreme court of judicature." This was in effect but bringing together in modern form the original and ancient "king's court." There were two permanent divisions of this consolidated court, the "high court of justice," and the "court of appeals." For convenience the former was divided into several divisions, but each division had all the powers of the others. The appellate division possessed all the jurisdiction of the other divisions, and for the purpose of finally determining the substantive rights of the parties on appeal, the unusual right was given to this division to admit in its discretion new evidence orally

or by deposition, to the end that the controversy may be finally settled. This discretion, it is said, has been very seldom exercised. Nevertheless, upon the theory of the act that no judgment should be set aside or new trial granted for any technical error, or for any error in the admission or rejection of evidence, but only in the interest of justice, we can see that, where evidence has been improperly excluded at the trial, it does not become a very far reach for the appellate tribunal to supply such omission in order to enable it to pass finally upon the merits. Under this procedure no civil case can fail or be much delayed for want of power in the court to decide it completely.

In the provision requiring the court to administer all legal and equitable remedies in one and the same action, the English act avoided the mistake of the American codes wherein the latter attempted to abolish the distinction between actions at law and suits in equity but continued the old and distinctive methods of trial and remedies, such as injunction and specific performance. This has led to much hostile construction and criticism which was avoided by the provisions of the English act.

This act brought about an immediate unification of all the substantive law, and every division of the court was required by a single method of procedure to administer all the remedies that any party might have, whether at law or in equity, in every cause, action or dispute properly before it. Where there was any conflict between the rules of equity and the rules of the common law, the rules of equity should prevail. All old forms and distinct actions were abolished. A "statement of claim" was substituted for the declaration and bill in equity; a "defense" for plea and answer; and a "reply" for the replication. The pleadings ended here except by leave of court.

2. It was further provided that the courts themselves should make their own rules of procedure in amplification of and to carry out the spirit and intent of the act. This provision is significant. Parliament, it is true, reserved a veto power as to any rules so to be adopted, and this was believed to be a sufficient check upon the possible usurpation of power by the courts.

The act itself contains only about one hundred sections, while the rules of the court number from twelve to thirteen hundred. The practice act of Connecticut has only thirty-four sections, and the rules of court number three hundred and twenty-six. The New Jersey Act has only thirty-four sections.

It is assumed by this provision of the act relative to rules, that the courts, from their special training and knowledge in the admin-

istration of justice, are better qualified than a legislative body to prescribe such rules of procedure as will be conducive to a speedy hearing and determination of causes brought before them.

In this regard the judicature act differs from all the various American codes. This difference is vital. It has led to the failure of many of those codes to carry out the purposes originally intended, and has been the one thing above all others that has resulted not only in the apparent but the substantial success of the English Act. Here in our so-called code States the various legislatures, under constitutional authority, have prescribed not only the powers and jurisdiction of the courts, but their practice and procedure as well. This has led to a constant increase from year to year of procedural provisions, many of which are antagonistic to the purposes of the initial act; many with only a local or temporary application, and many to meet some pending or anticipated legal action. The result has been that the New York code has grown from four hundred sections in the beginning to the ponderous compass of four thousand sections. True, the courts here in both code and common law States may, and do, under authority granted, prescribe rules for their own guidance and that of practitioners, but a single act of the legislature may nullify any one or more of them. In our own State, a common law State, our Supreme Court is authorized to prescribe rules governing the conduct of our courts, and we have a somewhat elaborate system so made. But an act of the legislature may abrogate the rule in whole or in part, or require a new rule to interpret or supplement the act itself. This is illustrated by Chancery Rule 37 supplementing the chancery appeals act of this State of 1907.

A system which permits two jurisdictions, one legislative and the other judicial, to prescribe rules of court procedure necessarily leads more or less to confusion, to uncertainty, to apparent antagonism, and creates prolixity of practice and prevents uniformity of decisions. In our own State we have only to examine the statutes relating to the procedure in attachment, garnishment, and many other statutory proceedings for a verification of the conclusion here stated and a demonstration of the superiority of the English method over our own.

3. The English rules are designated as "Orders" with various subdivisions, each order, however, covering the rules relating to a single topic.

I will briefly summarize the scope of these Orders, or such of them as have a bearing upon our own practice, with such brief comment as may seem pertinent.

Order 1 supplements the general purpose of the judicature act to unify the procedure, by providing for a single form of action. When we compare this method with our own, with its numerous forms of action and of defense at both law and in equity, we are led to ask why so many, and what sufficient reason, aside from their historical character, can be advanced in their support. If the various provisions of our own statutes regulating the practice and procedure in our courts of record were eliminated, I apprehend that their bulk would be reduced very materially. Under the English system every step in the cause is under the discretionary control of the court. A slip, therefore, in procedure will neither defeat nor delay the action.

Orders 64 and 70 provide, in substance, that the court or any judge shall have power to enlarge or abridge the time appointed by any rule for doing any act, upon such terms as justice may require, and this although the application therefor be not made until after the expiration of the time appointed or allowed. Non-compliance with any rule of practice shall not render any proceeding void unless the judge shall so direct, but such proceeding may be set aside in whole or in part or amended or otherwise dealt with in such manner and upon such terms as the judge shall direct. No application to set aside any proceeding for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken any fresh step after knowledge of such irregularity.

These provisions are significant and most conspicuous. Their enlargement of the discretionary power of the common law court cannot be doubted. It is, however, in harmony with the general trend of statutory enactments in both England and this country for the past seventy-five years, beginning in the former country with the Hilary rules of 1832. Our own statute of amendments and its predecessors illustrate the increasing authority given to the courts in this regard.

When it is thoroughly understood that adjective laws and adjective rights are only incidental to substantive rights and that the latter are more likely to be aided and protected by the tribunals especially prepared and empowered to administer them, the unrestricted discretionary power of these tribunals to direct their own procedure will not be seriously doubted. Both the federal and State constitutions in this country provide certain safeguards to personal liberty and to property rights. Under these provisions the jurisdiction of the several courts is defined. Neither property rights nor liberty can be taken without due process of law, and the right of trial by jury is preserved. All courts must proceed within these constitu-

tional limitations. They must have jurisdiction over the subject matter; parties must have a reasonable legal notice with an opportunity to be heard, and judgment must be confined to the issues presented. These limitations are fundamental to the rights and liberty of every citizen. They are substantive rights. Legislatures are equally bound to respect them. The question is as to whether this discretion in the matter of procedure only, shall be exercised by legislative or by judicial authority alone, or by both.

It seems to me on principle that, inasmuch as these constitutional rights must be observed by the courts, the means and methods of such observance, or the procedure, must necessarily come within the exclusive discretionary control of the courts alone and not jointly with any other body. Under our present practice, as we all know, our procedure is fixed by rules or by statute, or by both. The court is bound by them, and either party may invoke these rules or statutes to hinder or defeat the pending action. Our statute of amendments touches but feebly and inadequately the outer hem of the garment of procedural difficulties.

It must not be assumed, however, that questions of practice do not frequently arise in the English courts. They do; but they rarely defeat the pending action save only in cases of lack of jurisdiction or of such neglect as to constitute a forfeiture of a right to be heard on the merits.

Orders 16, 18 and 19 relate to the joinder of parties in causes of action and to counterclaims. Order 16 provides, in substance, that all persons may be joined in one action as plaintiffs in whom any right arising out of the same transaction or transactions exists, whether jointly, severally or in the alternative. On application, however, if it is deemed expedient, the court may order separate trials without amendment. If the cause is commenced in the name of the wrong plaintiff, the court may order the right person substituted or added upon such terms as may be just.

The rule as to parties defendant is equally as broad. Any one interested in whole or in part, or in the alternative, may be joined, and the judgment will be joint or several according to the respective rights or liabilities of the parties. Trustees, executors and administrators are permitted to sue or be sued in their representative capacity without bringing in the parties beneficially interested who, however, may be brought in on the order of the court. Where several parties are interested in the same way in a cause, the court may authorize one to prosecute or defend in behalf of all the others. No cause shall be defeated by reason of non-joinder or misjoinder of the parties. These may be either struck out or added, on the court's

own motion at any stage of the proceedings. Persons so added shall be duly summoned. Whenever contribution is claimed from a third party, such party may be brought in on leave of court and due notice.

Order 18 relates to joinder of causes of action. Several causes, whatever may be their nature, may be united in the same action; but if the court deems it more convenient to try them separately, he may so order.

Some limitations are placed upon this right; as, in actions to recover land, only questions growing out of the detention can be joined; also actions by trustees in bankruptcy cannot, without leave of court, be joined with an individual claim of such trustee. On the other hand, claims by or against husband and wife may be joined with claims by or against either of them, and personal claims by or against executors or administrators, when sued as such, may also be joined whenever they arise with reference to the estate.

Order 19 relates to defendant's counterclaim. Such defense may be made which arises out of the same or a different transaction in tort or contract, subject to the same limitations of convenience of trial as before stated. It also provides that the opposite party may demand particulars or a more definite pleading on short notice. Defective statements are either amended or struck out immediately.

Any abuse of the rights given under these orders is checked by the power of the court to correct such abuse and award commensurate costs.

The principle that the action shall proceed by short and direct steps is carefully safeguarded. There are no fictions.

Order 2 provides that the summons shall command the defendant to enter his appearance within a stated time and warn him that on his default judgment will be entered against him. The summons must be endorsed with a statement of the true nature of the claim and the true amount claimed when known. The pleadings must contain only a concise statement of the actual substantive facts (not the evidence) to be proved. Facts cannot be pleaded according to legal effect. Proofs are confined to the statements in the pleadings.

Under Orders 19 and 28 the court has unlimited power to grant amendments. Every step is a short and direct step to a given end.

A defendant may be called upon, on the application of a plaintiff, to satisfy the court at once that his defense is not a sham. If it is suspicious, terms may be imposed or the defendant forced to immediate trial. (Order 14).

Order 25 provides that there shall be no demurrers. Points of

law are to be raised in the answer and disposed of either on motion or at a trial.

The jury is usually required to find the disputed facts, special questions being submitted to them in writing for that purpose. Judgment is entered for the party entitled thereto by the trial judge upon such findings. This practice naturally lessens the grounds for granting new trials. Compare it with our own where new trials are frequently granted on grounds which have no relation to the facts. By the English method the court of review is enabled in the proper case to reverse the judgment and enter judgment for the party entitled thereto without a new trial.

Order 40 provides for motions for judgment, which are always made in the appellate court on the findings of facts by either court or jury in the court below.

Order 58 provides for appeals. All appeals are in the nature of a rehearing. Procedure by bills of exception do not exist. Notice of appeal is given which states the points of appeal. As already stated, the appellate court may take additional proof for the purpose of determining the substantive rights of the parties, and judgment is entered such as should have been entered in the court below.

Points of procedure are settled summarily. Questions on which final judgment depends must be raised at the first opportunity, or they are waived. On such questions an appeal may be taken immediately and has preference in the appellate court over appeals from final judgments.

Orders 50 and 53 provide that orders or judgments of the court shall be used in place of injunctions and writs of mandamus.

There are many other provisions, but enough have been referred to to fairly determine the general purpose and scope, as well as the general merits, of the English procedure.

That it has been successful is unquestioned, for it still receives the support of the leading members of both bench and bar of England and such of her colonies as have adopted it. Cases reversed on points of procedure or without due regard to the merits are rare, if not unknown. The leading principles of this act were adopted by Connecticut in 1879, as I have stated, and no member of the bench or bar of that State has been heard to say, so far as I am aware, that that State should abandon it or go back to the old methods of procedure.

This should be a sufficient demonstration that at least the underlying principles of the act can be adapted to American conditions

and life. The successful application of the principles of the act to the procedure of the Municipal Court of Chicago is significant.

The new Equity Rules of the Federal Court also follow closely the language of the rules of the English Judges framed under the Judicature Act.

That the system still has its opponents is also true, both in this country and in England. This is evidenced by a recent article, and the conclusions the writer reaches.[6] These conclusions, however, are wide of the mark, for nothing suggested in the article indicates that England proposes to change the fundamental principles of her procedure, but only to provide for certain incidental matters as must necessarily arise from time to time in a great growing country concerning so vital a subject.

That the system is not yet perfect, and probably never will be, must be conceded. Nor is it probable that a perfect system can ever be devised. But, in my judgment, there are many principles of the English procedure which, with proper limitations as to their application, we may adopt in our own practice to our advantage.

We may come to this subject of procedural reform to scoff, but, as the full light of a century of purposeful effort is thrown upon us, we remain to pray.

WILLIS B. PERKINS.

GRAND RAPIDS.

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[6] 75 Cent. L. Jour. 402.